Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LEANDRE ADIFON and CARLO VARISCO

Appeal No. 2000-0784
Application No. 08/995,507

ON BRIEF

Before COHEN, FRANKFORT, and NASE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 6 through 20 and 22 through 24. Subsequent to the final rejection and in response to appellants' amendment filed November 1, 1999 (Paper No. 9),

the examiner has indicated the allowability of claims 4, 5 and 16 through 21. Claims 2 and 3 have been canceled. The above actions leave only claims 1, 6 through 15 and 22 through 24 for our consideration on appeal.

Appellants' invention is directed to a hydraulic elevator system for moving a car (14) within a hoistway (29) and, more particularly, to such a system that does not require a machineroom outside the hoistway for housing the hydraulic components (i.e., fluid tank, pump and valves associated therewith) and electronic controller for the system. In appellants' hydraulic elevator system the fluid tank (22) and pump (24) are located in the hoistway (Fig. 1), while the valve block (54), manually operable release mechanism (58) and electronic controller (48) are located outside the hoistway in a cabinet (50) conveniently positioned adjacent to a landing for the elevator (Fig. 2). Independent claims 1, 11 and 22 are representative of the subject matter on appeal and a copy of those claims may be found in the Appendix to appellants' brief.

The prior art references relied upon by the examiner in rejecting the appealed claims are:

Rohanna	4,438,831	Mar. 27, 1984
Nakamura et al. (Nakamura)	4,830,146	May 16, 1989

Claim 1 stands rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Nakamura.

Claims 11, 14, 15 and 22 through 24 also stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Nakamura.

Claims 1 and 6 through 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakamura in view of Rohanna.

Claims 11, 12 and 13 likewise stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakamura in view of Rohanna.

Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants regarding the rejections, we make reference to the examiner's answer (Paper No. 14, mailed February 11, 2000) for the reasoning in support of the rejections, and to appellants' brief (Paper No.

13, filed December 17, 1999) and reply brief (Paper No. 15, filed April 13, 2000) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determinations which follow.

With regard to the rejections relying on Nakamura under

35 U.S.C. § 102(b), we have reviewed the applied patent and, like appellants, find no teaching or disclosure therein of a hydraulic elevator system like that specifically set forth in claims 1, 11, 14, 15 and 22 through 24 on appeal. Looking particularly at independent claims 1, 11 and 22, we share appellants' view as expressed in the brief (pages 5-6) and in the reply brief (pages 2-5) that Nakamura does not show or describe a hydraulic elevator system wherein "the tank and pump are disposed in [or within] the hoistway," while "a valve block" (claim 1), "a release mechanism" (claim 11) or "a control valve assembly" (claim 22) associated with control of the elevator is "disposed outside the hoistway." The Nakamura patent teaches either having all the hydraulic components in the hoistway (Figs. 1-2) or moving the valve block along with the hydraulic pump and motor outside the hoistway (col. 4, lines 47-54) to thereby eliminate the need to service the hydraulic devices in the elevator shaft. There is no disclosure or suggestion in Nakamura of separating the valve block (or control valve assembly) from the hydraulic pump, nor of moving the valve block (or control valve assembly) outside the hoistway while keeping the hydraulic pump inside the

hoistway. As for independent claim 11, Nakamura does not even disclose a release mechanism like that described by appellants (specification, page 5), nor an arrangement in a hydraulic elevator system where the tank and pump of the system are "disposed within the hoistway" and the release mechanism is "disposed outside the hoistway" as required in claim 11 on appeal.

In light of the foregoing, we will not sustain the examiner's rejections of claims 1, 11, 14, 15 and 22 through 24 under 35 U.S.C. § 102(b) as being anticipated by Nakamura.

As for the examiner's rejections of claims 1, 11, 14, 15 and 22 through 24 under 35 U.S.C. § 103(a) as being obvious over Nakamura, for basically the same reasons as set forth above, we find ourselves in agreement with appellants' position that Nakamura provides no teaching or suggestion of a hydraulic elevator system like that specifically set forth in the enumerated rejected claims. See pages 7 and 8 of appellants' brief and pages 5-6 of the reply brief for appellants' position. The examiner's selection of only the

flow rate control valve (20) of Nakamura to be located outside the hoistway is clearly contrary to the teachings of that patent at column 4, lines 47-54, which disclosure suggests that moving the control valve along with the hydraulic pump and motor outside the hoistway serves to eliminate the need to service those hydraulic devices in the elevator shaft. Like appellants, we view the examiner's position as being a classic example of hindsight reconstruction based on impermissible hindsight derived from appellants' own teachings.

For the above reasons, we will not sustain the examiner's rejections of claims 1, 11, 14, 15 and 22 through 24 under 35 U.S.C. § 103(a) as being obvious over Nakamura.

Regarding the examiner's additional rejections of claims 1, 6 through 10, 11, 12 and 13 under 35 U.S.C. § 103(a) based on the collective teachings of Nakamura and Rohanna, we have reviewed the applied patents and evaluated their teachings, but find ourselves in agreement with appellants' position as set forth on pages 11-14 of the brief and pages 6-7 of the reply brief that the examiner has clearly not made out a prima

facie case of obviousness. Accordingly, for those reasons, we have determined that the examiner's further rejections of claims 1, 6 through 10, 11, 12 and 13 under 35 U.S.C. § 103(a) as being obvious over Nakamura in view of Rohanna will not be sustained.

In light of the foregoing, we have refused to sustain each and every one of the examiner's rejections before us on appeal. Thus, the decision of the examiner to reject claims 1, 6 through 15 and 22 through 24 of the present application under either

35 U.S.C. § 102(b) or 35 U.S.C. § 103(a) is reversed.

REVERSED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
CHARLES E. FRANKFORT Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)	

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